WP(C) 6019/2007

BEFORE

THE HON'BLE MR. JUSTICE IA ANSARI

Heard Mr. M.U. Mahmud, learned counsel for the petitioner, and Mr. LP Sharma, learned Standing Counsel, Gauhati University.

2. The case of the petitioner is, in brief, thus: The petitioner got admitted in LL.B. course, at Barpeta Law College, at Barpeta, for the Session 2000-2001. The petitioner passed LL.B. preliminary examination in the year 2001 and got admitted in LL.B. intermediate examination for the Session 2001-2002. The petitioner passed LL.B. intermediate examination in the year 2002. The petitioner was, then, admitted into LL.B. final year examination for the Session 2002-2003 in the same college. All of a sudden, the petitioner suffered from mental disorder and remained under treatment, at various places, including LGB Mental Hospital, Tezpur. Consequently, the petitioner could not appear, in final examination, in the year 2003. After his recovery, the petitioner appeared in the final year examination in the year 2004; but he could not pass in three Papers, namely, Paper Nos. I, II and III. The petitioner, then, appeared in the examination held in 2005; but he could pass only in two Papers, namely, Paper No. I and Paper No. IV and could not clear Paper No.II. The petitioner, then, once again, appeared, in the year 2006, in the final examination to clear Paper No.II of the final year, but failed. The petitioner, then, made a representation, dated 24.09.2004, to the Controller of Examination, Gauhati University, with a prayer to grant him permission in the ensuing LL.B. final examination to be held in December, 2007. However, the Controller of Examination, vide letter, dated 03.10.2007, has informed the petitioner that he is not eligible to appear in the ensuing LL.B. final examination, 2007, inasmuch as the petitioner's last chance has already expired. Aggrieved by the order, dated 03.10.2007, the petitioner has, now, come to this Court seeking, with the help of the present writ petition made under Article 226, issuance of writ(s) setting aside and quashing the order, dated 03.10.2007, aforementioned and commanding the respondents/authorities concerned to allow the petitioner to appear in the ensuing LL.B. final examination to be held in December, 2007.

3. The subject of controversy, in the present writ petition, thus, centers around the interpretation of Regulations 14 and 15 of the Gauhati University. Regulations 14 and 15 are, therefore, reproduced hereinbelow:

14. A candidate who fails to pass or fails to appear in the first due examination shall have to pass in that examination within the period of holding the next two consecutive examinations.

15. A candidate shall be required to clear his/her first LL.B. degree within five years from the date of his/her first due examination in LL.B. Preliminary, provided that a student shall be allowed to appear in not more than three chances in each part of the LL.B. examinations.

4. Coupled with the above, by notification, dated 27.09.2007, the Gauhati University has modified Clause 15 of its regulation. The relevant portion of this notification reads as under:

One special chance (4th) each will be given to the candidates of any two of the three LL.B examinations (i.e., preliminary, intermediate or final in which this required) under the regulation mentioned above provided that a candidate must complete his/her LL.B. degree within six years from the date of his/her first due examination in LL.B. Preliminary. This will also be applicable for the candidates having back.

Further, individual applications of such candidates must be submitted through the concerned principals by giving individual undertaking that the candidates shall not ask for any more chances in future.

5. With the amendment, as introduced by the notification, dated 27.09.2007, aforementioned, what becomes clear is that a candidate shall be required to cle

ar his/her LL.B. degree within six years from the date of his/her first due exam ination in LLB. preliminary provided that a student shall be allowed to appear i n not more than four times in any two of the three LL.B. examinations.

6. What is, however, extremely important to note is that according to Regul ation 14, a candidate, who 'fails to pass or fails to appear' in the fist due ex amination, shall have to pass in that examination within the period of holding t he next two consecutive examinations. This shows that Regulation 14 draws no dis tinction between a candidate, who 'fails to pass or who fails to appear'. Regula tion 15 provides that a candidate shall be required to clear his/her LL.B. degr ee within six years from the date of his/her first due examination in LLB. Preli minary. The petitioner, admittedly, took admission in the LL.B. preliminary clas s in the year 2001. The petitioner must, therefore, pass his final year examinat ion within a period of six years from the date of his first examination in LL.B. The petitioner's sixth year would, admittedly, be completed with the final year examination, which is scheduled to be held with effect from 28th December, 2007 . Viewed thus, it is clear that the petitioner can appear in the ensuing LL.B fi nal examination if he is not, otherwise, disqualified.

7. What is, however, contended, on behalf of the respondents, is that the p etitioner has already appeared, in the final year examination, on four occasions and must, therefore, be treated to have exhausted all the four chances availabl e to him in terms of the Regulations 14 and 15 read with the notification, dated 27.09.2007, aforementioned. While considering the objection, so raised by the r espondents, what needs to be emphasized is that the petitioner is, admittedly, e ntitled to altogether four chances in any two of the three of LL.B. examinations . The petitioner failed in three Papers, namely, Paper Nos. I, II and IV in the year 2004. While he passed in Paper I and Paper IV in the year 2005, he could n ot succeed in Paper II. Though the petitioner appeared in the LL.B. final year e xamination in the month of March, 2007, for the Session 2006-2007, he could not clear the Paper No.II.

8. The question, now, is as to how many chances the petitioner has received . In this regard, what needs to be noted is that Regulation 14 makes no distinct ion between a candidate, who fails to pass or fails to appear. Since the petitio ner had not appeared, in the year 2003, for his final examination, he would, ord inarily, be taken to have exhausted one of his chances. If this fact is taken in to consideration, it logically follows that the petitioner had already utilized his first chance in the year 2003 and he, thereafter, got three more chances, wh en he appeared but could not pass in the final examination in the year 2004, 200 5 and 2006.

9. What is, now, of utmost importance to note is that the expression, 'a ca ndidate, who fails to pass or who fails to appear', occurring in Regulation 14, means a candidate, who voluntarily fails to appear and not a candidate, who coul d not appear for reasons beyond his control. The outer limit for passing LL.B. e xamination is six year. In this backdrop, if the case of the petitioner is consi dered, it becomes clear that if the petitioner had been suffering from insanity, his non-appearance in the final year examination, held in the year 2003, must b e treated as involuntary and for reasons beyond his control. In such circumstanc es, it is for the respondents to show that the petitioner's no-appearance in the final year examination, in the year 2003, was voluntary.

10. What is of utmost importance to note, now, is that it is not the case of the respondents that the petitioner had not suffered from mental disorder as co ntended by him. In such circumstances, the petitioner's non-appearance in the fi nal year examination, held in the year 2003, cannot be construed to mean that th e petitioner had voluntarily failed to appear and had thereby exhausted one of h is four chances, which he was, otherwise, entitled to.

11. Because of what have been discussed and pointed out above, it is clear t

hat the petitioner has not exhausted four chances of appearing in the final year examination, as contemplated under the Regulations, and the petitioner is, therefore, entitled to seek issuance of Writ commanding the respondents to allow the petitioner to appear in the L.L.B. final year examination, in the year 2007, which would, according to what Mr. LP Sharma, learned Standing Counsel, Gauhati University, informs this Court, commence from 28th December, 2007.

12. Because of what have been discussed and pointed out above, this writ petition succeeds and the impugned order, dated 03.10.2007 (Annexure 9 to the writ petition) is hereby set aside and quashed. The respondents are hereby directed to do the needful in order to enable the petitioner to appear in the LL.B. final year examination, which is scheduled to be commenced from 28th December, 2007.

13. With the above observations and directions, this writ petition shall stand disposed of.

14. No order as to costs.